

The Honorable Marsha J. Pechman

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

DEBI HUMANN,

Plaintiff,

v.

CITY OF EDMONDS, a municipal
corporation, and MICHAEL COOPER, in
his individual and official capacities,

Defendants.

CASE NO.: 2:13-cv-00101-MJP

**JOINT PROPOSED
JURY INSTRUCTIONS (CITED)**

DATED this 10th day of September, 2014

FRANK FREED SUBIT & THOMAS, LLP

By: /s/ Jillian M. Cutler

Beth Barrett Bloom, WSBA #31702

Jillian M. Cutler, WSBA #39305

Attorneys for Plaintiff Debi Humann

KEATING BUCKLIN & McCORMACK, INC, PS

By: /s/ Jayne L. Freeman (via email approval)

Jayne L. Freeman, WSBA # 24318

Attorneys for City of Edmonds

TURNER KUGLER LAW, PLLC

By: /s/ John T. Kugler (via email approval)

John T. Kugler, WSBA # 19960

Attorney for Defendant Micheal Cooper

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JOINT PROPOSED JURY INSTRUCTION NO. 1

EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Source: Ninth Circuit Model Jury Instruction No. 1.8

JOINT PROPOSED JURY INSTRUCTION NO. 2

TWO OR MORE PARTIES—DIFFERENT LEGAL RIGHTS

You should decide the case as to each party separately. Unless otherwise stated, the instructions apply to all parties.

Ninth Circuit Model Instruction No. 1.5

JOINT PROPOSED JURY INSTRUCTION NO. 3

FAIR TREATMENT

All parties are equal before the law and a municipal corporation or individual is entitled to the same fair and conscientious consideration by you as any party.

Source: Ninth Circuit Model Instruction No. 4.1(modified)

JOINT PROPOSED JURY INSTRUCTION NO. 4

LIABILITY OF CITY – SCOPE OF AUTHORITY NOT IN ISSUE

The City of Edmonds can only act through its employees or agents. Therefore, the City is responsible for the acts of its employees and agents within the scope of their authority. Under the law, the Mayor acts as an agent of the City of Edmonds during the time he is serving in office.

Source: Ninth Circuit Model Jury Instruction No. 4.3 (modified)

JOINT PROPOSED JURY INSTRUCTION NO. 5

**SECTION 1983 CLAIM AGAINST LOCAL GOVERNING BODY
DEFENDANTS BASED ON ACT OF FINAL POLICYMAKER—ELEMENTS
AND BURDEN OF PROOF**

(Defendant City of Edmonds)

In order to prevail on her § 1983 claim against the City of Edmonds based on her December 2011 lay off, Plaintiff Humann must prove each of the following elements by a preponderance of the evidence:

1. Mayor Earling acted under color of law;
2. the acts of Mayor Earling deprived Plaintiff Humann of her First Amendment rights under the United States Constitution as explained in prior instructions;

A person acts “under color of law” when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that Mayor Earling acted under color of law. Therefore, the first element requires no proof.

The jury should decide element two.

If you find Plaintiff Humann has proved each of these elements, and if you find that Plaintiff Humann has proved all the elements she is required to prove under Instruction [specify the instruction[s] that deal with the particular right[s]] as to her December 2011 reinstatement and layoff, your verdict should be for Plaintiff Humann on this claim. If, on the other hand, Plaintiff Humann has failed to prove any one or more of these elements as to her December 2011 reinstatement and layoff, your verdict should be for the City of Edmonds on this claim.

Source: Ninth Circuit Model Jury Instruction No. 9.5 (modified) (Approved 1/2012)

JOINT PROPOSED JURY INSTRUCTION NO. 6

**SECTION 1983 CLAIM AGAINST DEFENDANT IN INDIVIDUAL
CAPACITY—ELEMENTS AND BURDEN OF PROOF
(Defendant Cooper)**

In order to prevail on her § 1983 claims against the defendant Micheal Cooper, Plaintiff Humann must prove each of the following elements by a preponderance of the evidence:

1. Mr. Cooper acted under color of law; and
2. the acts of Mr. Cooper deprived Plaintiff Humann of her particular rights under the United States Constitution as explained in prior instructions.

A person acts “under color of law” when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that defendant Cooper acted under color of law. Therefore, the first element requires no proof.

If you find Plaintiff Humann has proved each of these elements, and if you find that Plaintiff Humann has proved all the elements she is required to prove under Instruction No. ____ [Due Process-Liberty Interest] , your verdict should be for Plaintiff Humann on this claim. If, on the other hand, Plaintiff Humann has failed to prove any one or more of these elements, your verdict should be for defendant Cooper on this claim.

Source: Ninth Circuit Model Jury Instructions No. 9.2 (Approved 10/2009)

JOINT PROPOSED JURY INSTRUCTION NO. 7

THE JURY'S DUTY TO DETERMINE DAMAGES

It is for you to determine what damages, if any, have been proved. Your award must be based upon evidence and not upon speculation, guesswork or conjecture. The law has not furnished us with any fixed standards to measure emotional distress, humiliation, loss of enjoyment of life, personal indignity, embarrassment anxiety or anguish. With reference to these matters, you must be governed by your own judgment, by the evidence in the case, and by these instructions.

Source: WPI 330.81

JOINT PROPOSED JURY INSTRUCTION NO. 8

DAMAGES – MITIGATION – WAGE LOSS

The plaintiff, Debi Humann, has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

To establish a failure to mitigate, the City of Edmonds has the burden of proving:

(1) There were openings in comparable positions available for Plaintiff Humann elsewhere after she was terminated and/or laid off;

(2) Plaintiff Humann failed to use reasonable care and diligence in seeking those openings; and

(3) The amount by which damages would have been reduced if Plaintiff Humann had used reasonable care and diligence in seeking those openings.

You should take into account the characteristics of Plaintiff Humann and the job market in evaluating the reasonableness of her efforts to mitigate damages.

If you find that the City has proved all of the above, you should reduce your award of damages for wage loss accordingly.

Source: WPI 330.83

PLAINTIFF'S PROPOSED INSTRUCTION NO. 9

NO DOUBLE COUNTING DAMAGES

You should not award damages twice for the same harm.

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PLAINTIFF'S PROPOSED INSTRUCTION NO. 10**PUNITIVE DAMAGES**

If you find for Plaintiff Humann on her Fourteenth Amendment Liberty Interest Due Process claim against defendant Cooper you may, but are not required to, award punitive damages. The purposes of punitive damages are to punish a defendant and to deter similar acts in the future. Punitive damages may not be awarded to compensate a plaintiff.

Plaintiff Humann has the burden of proving by a preponderance of the evidence that punitive damages should be awarded, and, if so, the amount of any such damages.

You may award punitive damages only if you find that the defendant's conduct that harmed Plaintiff Humann was malicious, oppressive or in reckless disregard of her rights. Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring the plaintiff. Conduct is in reckless disregard of the plaintiff's rights if, under the circumstances, it reflects complete indifference to the plaintiff's safety or rights, or if the defendant acts in the face of a perceived risk that its actions will violate the plaintiff's rights under federal law. An act or omission is oppressive if the defendant injures or damages or otherwise violates the rights of the plaintiff with unnecessary harshness or severity, such as by the misuse or abuse of authority or power or by the taking advantage of some weakness or disability or misfortune of the plaintiff.

If you find that punitive damages are appropriate, you must use reason in setting the amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purposes but should not reflect bias, prejudice or sympathy toward any party. In considering the amount of any punitive damages, consider the degree of reprehensibility of the defendant's conduct.

Punitive damages may not be awarded against the City of Edmonds, nor on Plaintiff Humann's defamation claim.

Source: Ninth Circuit Model Jury Instruction No. 5.5 (Approved 7/2008) (modified to remove inapplicable sections).